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CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN DONALDO PERDOMO ESPANA,
aka John Doe, aka Juan Donaldo Perdomo-
España, aka Juan Donaldo Perdomo,

Defendant - Appellant.

No. 04-50387

D.C. No. CR-00-00584-CAS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Christina A. Snyder, District Judge, Presiding

Submitted November 8, 2005^{**}

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

Juan Donaldo Perdomo España appeals from the district court's judgment imposing a 77-month sentence following his guilty-plea conviction for being an

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

illegal alien found in the United States following deportation, in violation of 8 U.S.C. § 1326.

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Espana has filed a brief stating that she finds no grounds for relief, along with a motion to withdraw as counsel of record.¹ No pro se supplemental brief or answering brief has been filed.

We have conducted an independent review of the record pursuant to *Penson v. Ohio*, 488 U.S. 75, 83 (1988). Because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 125 S.Ct. 738 (2005)). If appellant does not want to pursue

¹ Counsel's February 14, 2005 request to withdraw her *Anders* motion is denied.

resentencing, appellant should promptly notify the district court judge on remand.

See Ameline, 409 F.3d at 1084.

Counsel's motion to withdraw as counsel is denied.

The mandate shall issue forthwith.

REMANDED.